DOCUMENT RESUME

ED 378 116 SO 024 660

TITLE	Statement of Facts for 1979 City-Wide Mock Trial Competitions. Ex Parte in the Matter of the Petition of Darryl Bryant for Adoption. No. MT-79.
INSTITUTION	Georgetown Univ., Washington, DC. Law Center.; National Inst. for Citizen Education in the Law, Washington, DC.
PUB DATE	79
NOTE	31p.; For related items, see SO 024 656-674. Some pages may not reproduce clearly.
AVAILABLE FROM	Social Studies School Service, Dept. A3, P.O. Box 802, Culver City, CA 90232-0802.
PUB TYPE	Guides - Classroom Use - Instructional Materials (For Learner) (051) -- Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Adoption; Citizenship Education; *Civil Law; Court Litigation; Instructional Materials; *Law Related Education; Secondary Education; Social Studies
IDENTIFIERS	*Mock Trials; *Street Law

ABSTRACT

Prepared by the District of Columbia Street Law Project for its eighth annual city-wide mock trial competition, this instructional handout provides material for the hearing of an adoption petition. Darryl Bryant, the husband of Angela Burns Bryant, Eric's natural mother, petitions the court to adopt Eric. George Hayes, Eric's natural father, opposes the adoption. Both claim to act in the best interests of the child. The handout clarifies the laws and explains the legal precedents. As evidence, the handout provides witness statements from Darryl and Angela Bryant, a social worker, Hayes, his mother, and Hayes' probation officer. Through participation in mock trials and analysis of the activity, students gain an insider's perspective on courtroom procedure and a basic understanding of the legal mechanism through which society resolves its disputes. Mock trials develop critical analysis, questioning and listening skills, and skills in preparing and organizing materials. (JD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 378 116

1979 Street Law Mock Trial Competition

Materials

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it
☐ Minor changes have been made to improve reproduction quality
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

prepared for the Eighth Annual Citywide Mock Trial Competition sponsored by the Public Schools of the District of Columbia and the D.C. Project Street Law Program of Georgetown University Law Center

"PERMISSION TO REPRODUCE THIS MATERIAL IN OTHER THAN PAPER COPY HAS BEEN GRANTED BY
CAROLINE KULEZYCKI
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

prepared and presented by
The D.C. Project Street Law Staff

SO 024 660

the D.C. street law project

D.C. Street Law Project
Georgetown University
Law Center
600 New Jersey Ave, NW
Suite 330
Washington, DC 20001
(202) 662-9615

BEST COPY AVAILABLE

Superior Court of the
District of Columbia

FAMILY DIVISION

Ex parte in the Matter of the Petition of Darryl Bryant for Adoption	)	No. MT-79

STATEMENT OF FACTS

This hearing arises out of Mr. Darryl Bryant's petition for the adoption of Eric. Mr. Bryant is the husband of the baby's natural mother, Mrs. Angela Burns Bryant. The Bryants were married on January 15, 1979.

Eric was born on March 15, 1978. Angela was 16 years old at that time, and not married. Mr. George Hayes, the respondent in this case, is the baby's father, and that fact is not in dispute. At no time were Mr. Hayes and Ms. Bryant married.

D. C. Code §16-394 (b) (2) states, "Consent to the proposed adoption of a person under eighteen years of age is necessary.... from both parents, if they both are alive...."

In the event that this required consent is withheld by one of the natural parents, D.C. Code §16-304(e) states,

> "The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child."

In his petition for adoption, Darryl Bryant stated that the adoption would be in the best interests of the child, since he

has a deep love and concern for the child and the child's mother, who is Darryl's wife. Petitioner feels that it is in the child's best interests to terminate the natural father's interests and to give the child Darryl's last name. Petitioner feels these actions will safeguard the child's interests and the security of the family unit.

In his answer to Darryl Bryant's petition, George Hayes states that his withholding consent to adoption is not contrary to the best interests of the child. Mr. Hayes claims that the child has a right to know his natural father, and that he has a right to know his son. Mr. Hayes claims that by allowing him to continue to exercise his parental interests, he will be able to monitor the protection of the child's interests.

The court can decide to: (a) grant Darryl Bryant's petition; or (b) deny the petition; or (c) issue such an order as the court deems appropriate.

ADDITIONAL STIPULATIONS

The facts set forth in the Statement of Facts are not in dispute. In addition to the above facts, the following facts are agreed to by all parties, and therefore are not in dispute:

1. On his birth certificate, Eric's last name is Burns.

2. Darryl Bryant is not employed in any capacity, and he has no source of income.

3. Angela Burns Bryant has no independent income.

4. The sole source of support for Angela, Darryl, and Eric is Angela's parents.

5. Thomas King, witness for the petitioner, is qualified as an expert to testify as the social worker who investigated this case.

6. No person from the Adoption Branch of the Department of Human Resources has worked on this case except Thomas King.

7. Elizabeth Gordon, witness for the respondent, is testifying as a character witness, not as an expert.

WITNESSES

For the Petitioner

Mrs. Angela Burns Bryant, mother of Eric
Mr. Darryl Bryant, petitioner and husband of Angela
Mr. Thomas King, social worker

For the Respondent

Mr. George Hayes, respondent and father of Eric
Mrs. Jessica Hayes, George Hayes' mother
Ms. Elizabeth Gordon, probation officer

Evidence

Letter from George to Angela
Cancelled check (made out to Angela, from Mrs. Jessica Hayes)

DEPOSITION OF

DARRYL BRYANT, WITNESS FOR THE PETITIONER

TAKEN BY RESPONDENT'S ATTORNEYS ON MARCH 12, 1979

My name is Darryl Bryant. I am 19 years old. I am married to Angela Burns Bryant. Angela, her son Eric, and I live at 917 Mapleview Terrace, S.E. Angela and I were married on January 15, 1979.

Angela and I first met in May, 1978. We actually met on a Metrobus, as she was taking Eric to the doctor for his two-month checkup. I really love kids, and he was such a cute little guy, I couldn't help remarking on that to her. Angela brightened up immediately. We started talking, and, next thing you know, I wound up with her at the doctor's office. We really hit it off, right from the start.

Angela seemed so tired and alone when I first met her. She told me about George, and how he had completely abandoned her, left her to go through the whole business alone. I couldn't imagine that a person with any kind of human feelings would leave someone alone like that.

Well, I soon found out exactly what kind of a person this George guy is. I went over to Angela's one morning shortly after I met her and there was this guy standing in her living room, hollering at Angela to "make that brat shut up..." The baby was crying, obviously hungry. Angela was crying too. I asked Angela if she needed help, but this guy just turned to me and screamed, "Get out. Don't mess with Angela or my son, or else!" Then Angela asked me to leave, and I did.

After that scene, even though I was against it, George insisted on visiting the baby about once a week, and Angela let him do that until we got engaged.

I think she did this because she was afraid of him. Those visits always seemed to leave her upset in the worst way. George didn't really care about the baby but ever since I

bagan to see Angela, I think he got jealous and decided he wanted Angela back.

I certainly think it's in the best interests of Eric and our family to put an end to this nonsense at once. Eric needs a full-time concerned father and family. He is and always will be my son, and part of our family. Angela and I love him as much as we love each other. Allowing George to come around will hurt Angela's and my relationship. It will also hurt how we relate to Eric.

In a little while, Angela and I will get a place of our own. We hope Eric will be able to have some brothers and sisters. To prevent Eric from having my name, from being a whole part of my family, will hurt him and us, and his future brothers and sisters.

It's true that I was once married for a few months when I was seventeen, but that was a mistake, and it's over now. We didn't have any kids. She's happily married to someone else. And I did drop out of school for a year, but I've made it up; I finished my high school work in December. I'm looking for a job right now; it's not easy, but I'm working on it. In the meantime, Angela's parents have been very generous in helping us out, and I'm sure they'll continue to do so.

_____

/s/ Darryl Bryant

Date:_____

DEPOSITION OF

ANGELA BURNS BRYANT, WITNESS FOR THE PETITIONER

TAKEN BY RESPONDENT'S ATTORNEYS ON MARCH 12, 1979

My name is Angela Burns Bryant. I am 17 years old. I live in my parents' home at 917 Mapleview Terrace, S. E.

On March 15, 1978, a beautiful, healthy son was born to me. My joy at Eric's birth was great. But there was a cloud over my joy: Eric's father, George Hayes, was nowhere around. In fact, he hadn't shown his face to me since I told him I was pregnant. On his birth certificate Eric has my name, Eric Burns.

George and I had been high school acquaintances for a few years, but we were never anywhere near serious. Then we went out once or twice, and one of those times we slept together.

When I found out I was pregnant, I was a little upset, but I always wanted children, and my parents were really supportive. George, though--he really got angry. When I told him, he yelled that it was my fault, and that I shouldn't expect anything from him. Two weeks later he wrote me a letter demanding that I put the baby up for adoption.

Aside from the letter I mentioned, I didn't hear from George again until two weeks after Eric was born. He asked to see the baby. I thought it couldn't hurt. He came again a month later, and again in another month. On George's third visit, when the baby was about 10 weeks old, Darryl happened to come in while George was there. George and Darryl didn't seem to get along from the very start. After that day, George insisted on coming more often.

Darryl and I got engaged when Eric was about 5 months old. One day shortly after our engagement, I called George and told him that he shouldn't come to see Eric anymore,

because Eric was going to have a new father. He started to yell at me over the phone, and I hung up. George didn't try to contact me again.

Darryl is a wonderful husband. We were married on January 15, 1979. The three of us are living with my parents until Darryl finds work. My parents are great. Right now, they're our only source of financial support. We hope to be able to repay them some day. As soon as Darryl gets a job, we'll get our own place. I hope to go back to school in September, to finish my senior year.

Only problems for Darryl, myself, and Eric will result if George is allowed to stand in the way of the adoption. As the child's natural mother, I feel I have the right to consent to my own husband's adopting my own child. George Hayes has had nothing worthwhile to do with this baby, and he has no right to ruin Eric's chances for future happiness, or ruin our family.

_____

/s/ Angela B. Bryant

Date: _____

DEPOSITION OF

THOMAS KING, WITNESS FOR THE PETITIONER

TAKEN BY RESPONDENT'S ATTORNEYS ON MARCH 5, 1979

My name is Thomas King. I am a social worker for the Adoption Branch of the Department of Human Resources. I live at 1699 18th Street, N.E.

I have been with the Department of Human Resources for the past five years. During this time I have conducted over a hundred adoption investigations. Prior to my employment with D.H.R., I worked for two years with a private social service organization, the Family Clinic of Washington. I received my undergraduate degree in sociology in 1970 from the University of Maryland, and I completed my Masters in Social Work in 1972 at Howard University.

I have conducted an investigation into Darryl Bryant's petition for the adoption of Eric. As a result of my investigation I have come to the belief that it would be in Eric's best interests for the petition to be granted. I did not believe it necessary to interview George Hayes. Through my interviews with the Bryants, it became clear to me that his presence would only be a negative and disruptive force in the Bryant family's future, and I felt that Mr. Hayes' case need not be pursued further. I have interviewed Angela three times, and Darryl twice, both in their home. Eric was awake and present with each parent for one of each of these interviews, and they were quite affectionate with him.

By no means do Angela and Darryl have an ideal situation. To the contrary, the Bryant household has several negative factors. Neither Angela nor Darryl are employed, so her parents have allowed them to live in their house until Darryl finds a job. Angela and Darryl have virtually no privacy. I have observed that Angela's mother is constantly telling her what to do with the baby, how to feed him, how to discipline him, and Angela has told me that she resents this very deeply. I do get the feeling that, although Mr. and Mrs. Burns initially agreed to let the young

couple live with them, they're beginning to feel very put-upon, and they suspect that Darryl is not looking very hard for a job. They also were very angry that Darryl had not told them or Angela about his previous marriage until about a month ago.

Despite these problems, there are some very positive reasons to grant Darryl's petition to adopt Eric. Perhaps the most important factor is the love that Darryl and Angela have for each other and Eric. I'm convinced they have a strong marriage. They both expressed a great desire to have more children soon. They have plans to move out of the Burns house as soon as Darryl can find a job.

The facts of this situation make it clear that George Hayes is a threat to the Bryant's happy family life. He wasn't the least bit interested in the baby until Darryl started dating Angela. He actually wanted the baby put up for adoption. Then, for whatever reason, he then seemed to have started to use his interest in the child as an excuse to try to come between Darryl and Angela.

To deny Darryl's petition would only harm this family. George's presence would hover over the family, and most likely be an increasing source of tension for Angela and Darryl. Having a different last name from his family and having to relate to two fathers would surely be a source of confusion for Eric as he grows up. Though a natural father deserves serious consideration, here the child is presently an infant, and he has no strong ties to George. It is in the child's best interests to grant this petition.

_____

/s/ Thomas King

Date:_____

DEPOSITION OF
GEORGE HAYES, WITNESS FOR THE RESPONDENT
TAKEN ON MARCH 3, 1979
BY PETITIONER'S ATTORNEYS

My name is George Hayes. I am 18 years old. I live with my parents at 232 T Street, S.E. Eric is my son.

Angela Burns and I were close friends in high school. We dated a lot, over a one or two year period, but I certainly wasn't ready to think about marriage. When she told me she was going to have a baby, I was angry, because I felt she'd betrayed me. I was angry with myself, too, for being plain stupid. I knew Angela well enough to know she wasn't mature enough to deal with a baby, and I certainly didn't think I was.

When she figured out that I wasn't going to marry her just because she was pregnant, she turned me right off. I mean, she wouldn't talk to me on the phone, wouldn't see me when I went over there.

I felt responsible for the baby in a certain way, and at one point I did consider getting married, if that would help. But Ms. Gordon, my old probation officer, talked me out of it. She talked to me about the options that Angela and I might have, and she suggested that adoption might be the best course, for the baby and for us. I thought that was a pretty good idea. I wrote to Angela about this, but I never heard back from her. I sent her a check in that letter, too, to help with her medical expenses. She never acknowledged it, but she did cash it.

When Angela went to the hospital to have Eric, I sent her flowers, but I never heard from her if she got them. After Eric was born, I went over to the hospital and went up to the nursery and one of the nurses held Eric up for me to see. Right then, I realized this was <u>my</u> child, <u>my</u> son. I wanted to hold him, to tell him how much I loved him, but they

wouldn't let me. I left that day without seeing Angela -- I was afraid I'd upset her, and she didn't need more upset at that point.

Since I loved and felt responsible for Eric as my son as well as Angela's, I visited her when Eric was about two weeks old. She agreed to let me visit him. She accepted the little bit of cash I could offer at that time, about $30.00. I began to visit about once a month, and I always gave Angela whatever money I could. I sort of began to hope that Angela and I could get back together.

On my third visit, Angela started telling me about this Darryl character she was seeing. She started crying, but wouldn't tell me why. Just then, this guy walked in, and I guessed it was Darryl. He yelled at me, "Haven't you done enough to her? Why don't you leave her alone?" Then the baby started crying and he shouted at Angela "Can't you shut that brat up?" He stormed out. After that, Angela managed to keep Darryl away when I was visiting.

I didn't want Angela to get serious with Darryl -- he seemed to have a very bad temper, for one thing. But having the baby made her want to get married more than ever, and I still wasn't ready. I think she agreed to his proposal because she wanted to get back at me. I'm sure she really likes me better than Darryl.

The night she told me she was engaged, she also told me I was never to see or go near her or Eric again. Of course, that upset me, and I suspected this was Darryl's way of getting me out of the picture. I was angry with her over the phone, and she just hung up. I didn't call back, I was too upset.

I'm not ready at this time to ask for custody of Eric, but I certainly think it's in his best interests not to cut me off from him. As his father, I have the right to see him, to be sure he's well cared for; he has the right to know me, to be spared the ordeal

of spending his later life searching for his real father.

While Eric is an infant, I think it's good for him to be with his mother. However, if things get really bad with Darryl and Angela, and if Eric's not being cared for properly, I want to have a chance to take him out of there. My parents are more than willing to help me, if I later want to have custody of Eric.

I'm working part-time now as a security guard in the D.C. Government, and I have assurances that this will become a full-time job when I graduate in May. I'm willing to contribute whatever money I can to Eric's support. I love Eric very much, and I hope that I'll always be able to be a good father to him, to help him, to be there when he needs me.

/s/ George Hayes

Date

DEPOSITION OF

JESSICA HAYES, WITNESS FOR THE RESPONDENT

TAKEN BY PETITIONER'S ATTORNEYS ON MARCH 3, 1979

My name is Jessica Hayes. My husband Woodrow and I live with our six children at 232 T Street, S.E. My husband is a retired physical education instructor with the D.C. Schools. I am a part-time sales clerk at Woodward and Lothrop.

George is the fourth youngest of my six children. He's always been a good boy, did well in school, and helped around the house. He was in trouble with the law once, but he got straightened out with the help of Ms. Gordon, his probation officer. Actually, I didn't think it was all that serious, I mean, you have to expect a boy to get in some trouble.

I really didn't approve of George going out with Angela. She didn't have a very nice reputation in the neighborhood. But he kept saying that it would be o.k., that he knew how to handle it.

I have always brought my children up to stand up and take responsibility for the things they do--most of all to work through their mistakes, and not blame other people. George made me proud, they way he faced his responsibility for Angela and the baby. He really wrestled with questions about what he should do - even though Angela was no help at all. He seriously considered getting married, but we talked him out of it, because that didn't seem like a good solution. We did lend him money to give to Angela to help pay her medical expenses. She never even said thank you.

After Angela had the baby, she did let George see him once in a while. George began to grow concerned for the baby's welfare, as a result of the conditions he found in Angela's home, and the way he saw Darryl treating the baby at times. My husband and I talked this situation over, and we agreed to tell George that we'd be happy to take custody of the baby if he ever felt that was necessary. We still feel that way, and we're ready to do it if it's the only thing that can stop this adoption.

With the proper education and an understanding home atmosphere, Eric can learn to deal with his situation as he grows older. Many children whose parents are divorced and remarried retain contact with their natural parents. George and Eric should not be punished because George and Angela were not married. George should have the rights that any other father or mother would have in this kind of situation, and my husband and I should have rights as Eric's grandparents.

_____

/s/ Jessica Hayes

Date:_____

DEPOSITION OF
ELIZABETH GORDON, WITNESS FOR THE RESPONDENT
TAKEN BY PETITIONER'S ATTORNEYS
ON MARCH 7, 1979

My name is Elizabeth Gordon. I live at 1717 Gallatin Street, N.W. I am a probation officer with D.C. Superior Court. I have a Bachelor of Arts Degree from Howard University. I have been through the regular training program for probation officers, and have been in this position for five years.

I first met George Hayes when he was 15 years old. He had been caught burglarizing an old warehouse with some other kids up on Rhode Island Avenue. It was his first offense, and since he had a good family situation, he was placed on one year's probation under my supervision.

George is one of the finest young men I've worked with. The trouble he got into was a big mistake, and he knew it. He was embarrassed by it, and was anxious to prove it was not his usual style. George completed his probation successfully. We have remained good friends since then.

After his probation period was over, George kept in touch with me. When Angela became pregnant, he was confused about what he should do. At one point, he was seriously considering marrying Angela. We discussed this, and I advised him that it was not a good idea. He was very hurt by the way Angela cut herself off from him and turned to Darryl. I urged him to try to talk to her about putting the child up for adoption.

When it became clear that Angela would keep the baby, George shifted his focus to his responsibilities as the father. Actually, he began to grow excited about the baby. He sent Angela money, which she never mentioned, but apparently spent. He began to think, with my advice, that when he was finished school and had a job, maybe then they could get married.

George has tried to cope with this situation in a very mature, intelligent way. Angela, on the other hand, has rushed into marriage with someone who has no plans, and from what I've heard, no future. To cut George off from his child now would be a terrible mistake, both for George, as well as Eric and Angela. Who knows when Darryl might leave Angela? I've checked the court records, and he's already left one marriage in ruins, according to court records. He could well do so again. George dislikes Darryl intensely, for very good reasons.

George loves Eric very much. I think it's wise that he's not seeking custody right now. But I've seen many young boys go wrong because they didn't have a natural father, and George should be able to visit his son and keep a check on his growth and development, in the same way that any parent would normally be able to do if he had lost custody of his child through divorce.

/s/ Elizabeth Gordon

Date

OCTOBER 9, 1977

DEAR ANGELA —

SINCE YOU WON'T TALK TO ME ON THE PHONE & YOU HIDE WHEN I COME TO YOUR HOME, MAYBE THIS LETTER WILL GET THROUGH TO YOU.

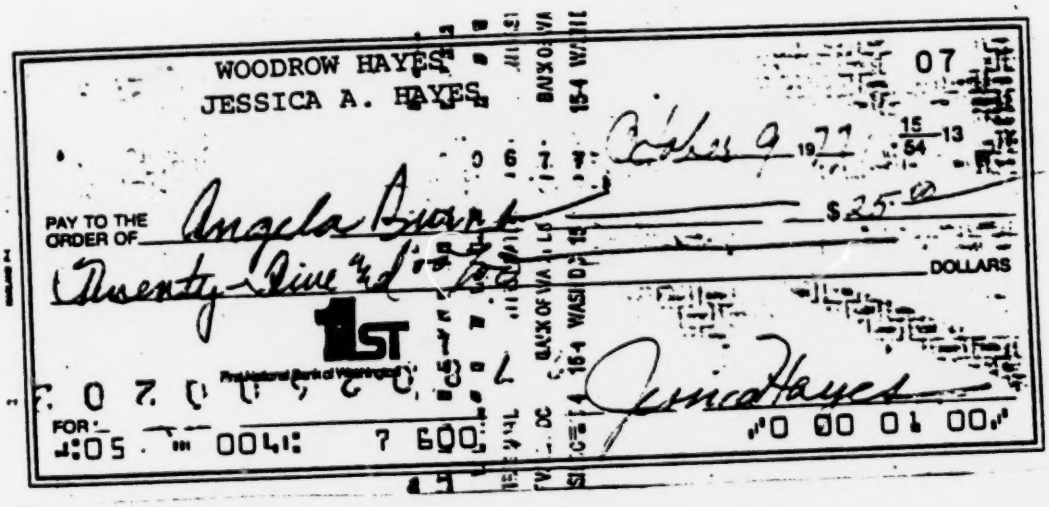
HAVING A BABY IS A REALLY BIG RESPONSIBILITY — I DON'T THINK I'M READY FOR IT — ARE YOU? HAVE YOU THOUGHT ABOUT WHAT IT WILL BE LIKE WHEN THE BABY IS ONE OR TWO YEARS OLD AND TAKING UP ALL OF YOUR TIME? I'M NOT SAYING YOU WON'T LOVE HIM — OR HER. BUT HAVE YOU THOUGHT OF DOCTOR'S BILLS, CLOTHES, SHOES, FOOD?

IT'S JUST THAT I DON'T THINK YOU'RE READY FOR THIS — AND I CAN'T REALLY HELP YOU OUT. MS. GORDON, MY PROBATION OFFICER, WANTS TO PUT US IN TOUCH WITH A REALLY GOOD ADOPTION AGENCY. I THINK YOU SHOULD CONSIDER IT.

I'M SORRY FOR THIS MESS. A CHECK IS ENCLOSED TO HELP WITH THE BILLS.

— GEORGE

BEST COPY AVAILABLE



WOODROW HAYES
JESSICA A. HAYES

07

Oct 9 1977

PAY TO THE ORDER OF Angela Grant

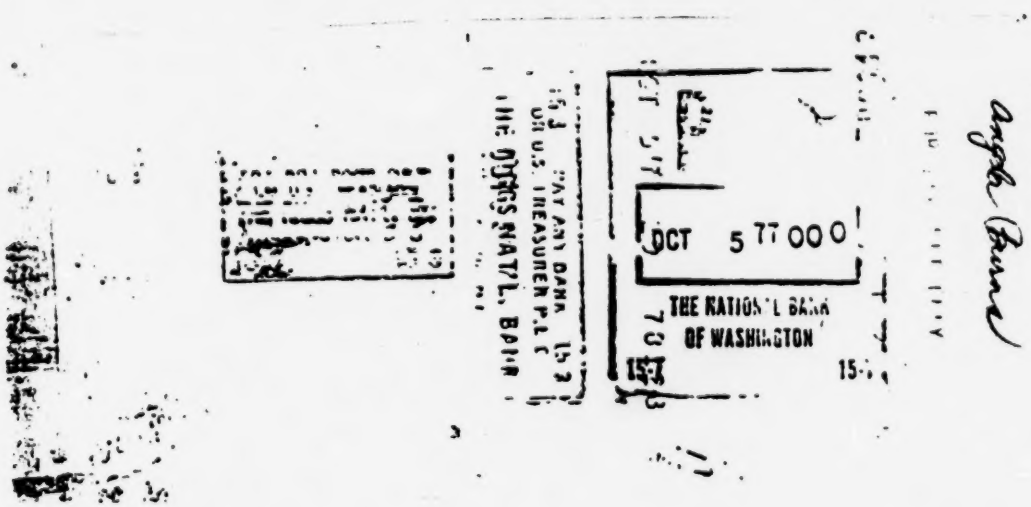
$ 25.00

Twenty-Five and 00/100 DOLLARS

1ST

Jessica Hayes

FOR



Angela Grant

DCT 5 77 000

THE NATIONAL BANK OF WASHINGTON

BEST COPY AVAILABLE

STANLEY v. ILLINOIS

Supreme Court of the United States, 1972.
405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551.

Mr. Justice WHITE delivered the opinion of the Court.

Joan Stanley lived with Peter Stanley intermittently for 18 years during which time they had three children. When Joan Stanley died Peter Stanley lost not only her but also his children. Under Illinois law the children of unwed fathers become wards of the State upon the death of the mother. Accordingly, upon Joan Stanley's death, in a dependency proceeding instituted by the State of Illinois, Stanley's children were declared wards of the State and placed with court appointed guardians. Stanley appealed, claiming that he had never been shown to be an unfit parent and that since married fathers and unwed mothers could not be deprived of their children without such a showing, he had been deprived of the equal protection of the laws guaranteed him by the Fourteenth Amendment. The Illinois Supreme Court accepted the fact that Stanley's own unfitness had not been established but rejected the equal protection claim, holding that Stanley could properly be separated from his children upon proof of the single fact that he and the dead mother had not been married. Stanley's actual fitness as a father was irrelevant. In re Stanley, 45 Ill.2d 132, 256 N.E.2d 814 (1970).

Stanley presses his equal protection claim here. The State continues to respond that unwed fathers are presumed unfit to raise their children and that it is unnecessary to hold individualized hearings to determine whether particular fathers are in fact unfit parents before they are separated from their children. We granted certiorari, 400 U.S. 1020, 91 S.Ct. 584, 27 L.Ed.2d 631 (1971), to determine whether this method of procedure by presumption could be allowed to stand in light of the fact that Illinois allows married fathers—whether divorced, widowed or separated—and mothers—even if unwed—the benefit of the presumption that they are fit to raise their children.

• • •

Is a presumption which distinguishes and burdens all unwed fathers constitutionally repugnant? We conclude that as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that by denying him a hearing and extending it to all other parents whose custody of their children is challenged the State denied Stanley the equal protection of the law guaranteed by the Fourteenth Amendment. • • •

The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of

BEST COPY AVAILABLE

his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." * * *

The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923), "basic civil rights of man," Skinner v. Oklahoma, [p. 328], and "[r]ights far more precious * * * than property rights," May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, supra, the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, supra, [p. 328], and the Ninth Amendment, Griswold v. Connecticut, [p. 250].

Nor has the law refused to recognize those family relationships unlegitimized by a marriage ceremony. The Court has declared unconstitutional a state statute denying natural, but illegitimate, children a wrongful death action for the death of their mother, emphasizing that such children cannot be denied the right of other children because familial bonds in such cases were often as warm, enduring, and important as those arising within a more formally organized family unit. Levy v. Louisiana, [p. 416]. "To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses." Glona v. American Guarantee & Liability Ins. Co. [p. 417]

These authorities make it clear that, at the least, Stanley's interest in retaining custody of his children is cognizable and substantial.

It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children. This much the State readily concedes, and nothing in this record indicates that Stanley is or has been a neglectful father who has not cared for his children. Given the opportunity to make his case, Stanley may have been seen to be deserving of custody of his offspring. Had this been so, the State's statutory policy would have been furthered by leaving custody in him.

It may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the

Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.[9]

Bell v. Burson held that the State could not, while purporting to be concerned with fault in suspending a driver's license, deprive a citizen of his license without a hearing which would assess fault. Absent fault, the State's declared interest was so attenuated that administrative convenience was insufficient to excuse a hearing where evidence of fault could be considered. That drivers involved in accidents, as a statistical matter, might be very likely to have been wholly or partially at fault did not foreclose hearing and proof in specific cases before licenses were suspended.

We think the Due Process Clause mandates a similar result here. The State's interest in caring for Stanley's children is *de minimis* if Stanley is shown to be a fit father. It insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family.

The State of Illinois assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on parental fitness and without proof of neglect. Stanley's claim in the state courts and here is that failure to afford him a hearing on his parental qualifica-

9. We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.

Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases, Ill.Rev.Stat. c. 37, § 704-1 et seq., provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of "all whom it may concern." Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood.

tions while extending it to other parents denied him equal protection of the laws. We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.

The judgment of the Supreme Court of Illinois is reversed and the case is remanded to that court for proceedings not inconsistent with this opinion.

Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Mr. Justice DOUGLAS joins in Parts I and II of this opinion.

Mr. Chief Justice BURGER, with whom Mr. Justice BLACKMUN concurs, dissenting.

• • •

In regard to the only issue which I consider properly before the Court, I agree with the State's argument that the Equal Protection Clause is not violated when Illinois gives full recognition only to those father-child relationships that arise in the context of family units bound together by legal obligations arising from marriage or from adoption proceedings. Quite apart from the religious or quasi-religious connotations which marriage has—and has historically enjoyed—for a large proportion of this Nation's citizens, it is in law an essentially contractual relationship, the parties to which have legally enforceable rights and duties, with respect both to each other and to any children born to them. Stanley and the mother of these children never entered such a relationship. The record is silent as to whether they ever privately exchanged such promises as would have bound them in marriage under the common law. • • • In any event, Illinois has not recognized common law marriages since 1905. • • • Stanley did not seek the burdens when he could have freely assumed them.

Where there is a valid contract of marriage, the law of Illinois presumes that the husband is the father of any child born to the wife during the marriage; as the father, he has legally enforceable rights and duties with respect to that child. When a child is born to an unmarried woman, Illinois recognizes the readily identifiable mother, but makes no presumption as to the identity of the biological father. It does, however, provide two ways, one voluntary and one involuntary, in which that father may be identified. First, he may marry the mother and acknowledge the child as his own; this has the legal effect of legitimating the child and gaining for the father full recognition as a parent. • • • Second, a man may be found to be the biological father of the child pursuant to a paternity suit initiated by the mother; in this case, the child remains illegitimate, but the adjudicated father is made liable for the support of the child until the latter attains age 18 or is legally adopted by another • • •.

Stanley argued before the Supreme Court of Illinois that the definition of "parents," set out in Ill.Rev.Stat., c. 37, § 701-14, as including "the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child, [or] * * * any adoptive parent," violates the Equal Protection Clause in that it treats unwed mothers and unwed fathers differently. Stanley then enlarged upon his equal protection argument when he brought the case here: he argued before this Court that Illinois is not permitted by the Equal Protection Clause to distinguish between unwed fathers and any of the other biological parents included in the statutory definition of legal "parents."

The Illinois Supreme Court correctly held that the State may constitutionally distinguish between unwed fathers and unwed mothers. Here, Illinois different treatment of the two is part of that State's statutory scheme for protecting the welfare of illegitimate children. In almost all cases, the unwed mother is readily identifiable, generally from hospital records and alternatively by physicians or others attending the child's birth. Unwed fathers, as a class, are not traditionally quite so easy to identify and locate. Many of them either deny all responsibility or exhibit no interest in the child or its welfare; and, of course, many unwed fathers are simply not aware of their parenthood.

Furthermore, I believe that a State is fully justified in concluding, on the basis of common human experience, that the biological role of the mother in carrying and nursing an infant creates stronger bonds between her and the child than the bonds resulting from the male's often casual encounter. This view is reinforced by the observable fact that most unwed mothers exhibit a concern for their offspring either permanently or at least until they are safely placed for adoption, while unwed fathers rarely burden either the mother or the child with their attentions or loyalties. Centuries of human experience buttress this view of the realities of human conditions and suggest that unwed mothers of illegitimate children are generally more dependable protectors of their children than are unwed fathers. While these, like most generalizations, are not without exceptions, they nevertheless provide a sufficient basis to sustain a statutory classification whose objective is not to penalize unwed parents but to further the welfare of illegitimate children in fulfillment of the State's obligations as *parens patriae*.

* * *

BEST COPY AVAILABLE

In the Matter of Petition for ADOPTION OF J. S. R.

No. 8773.

District of Columbia Court of Appeals.

Argued Feb. 10, 1977.

Decided May 26, 1977.

Over objection of natural mother, the Superior Court, Orman W. Ketcham, J., granted petition for adoption of minor child by his foster parents. The mother appealed. The District of Columbia Court of Appeals, Newman, C. J., held that: (1) the "best interests of the child" standard is not unconstitutionally vague; (2) to permit adoption over natural mother's objection without requiring a finding that she is unfit does not violate due process, and (3) proper standard for determining whether consent is being unreasonably withheld is the "clear and convincing" standard.

Affirmed.

David J. Ontell, Washington, D.C., appointed by this court, for appellant.

Jean R. Bower, Washington, D.C., for J. S. R.

Before NEWMAN, Chief Judge, GALLAGHER, Associate Judge, and HOOD, Chief Judge, Retired.

NEWMAN, Chief Judge:

Over the objection of appellant the natural mother of J.S.R., the court granted a petition for his adoption by his foster parents. She appeals primarily asserting that: (1) the "best interest of the child" standard of the D.C.Code 1973, § 16–304(e) [1] is unconstitutionally vague; (2) to permit adoption of her child over her objection without requiring a finding that she is unfit violates constitutional mandates; and (3) the trial

court finds after a hearing, that the consent or consents are withheld contrary to the best interests of the child." D.C. Code 1973, § 16-304(e).

court used an improper standard of proof. Finding no merit in these contentions, we affirm.[2]

Prior to the birth of J.S.R., appellant contacted the appropriate governmental social service agency seeking an adoptive placement for her expected child. For reasons not disclosed by the record, she was refused. J.S.R. was born in December 1967, in D.C. General Hospital. Appellant was married and the mother of two other children, but J.S.R. was not the child of her husband. Paternity has not been established. While hospitalized, appellant was diagnosed as having multiple sclerosis. Because she was unable to care or provide a home for him, J.S.R. remained at the hospital after birth and was eventually placed in the temporary care of the Department of Public Welfare. By order of the Juvenile Court in January 1969, J.S.R. was found to be homeless and without adequate care. He was ordered committed to the Department of Public Welfare for an indeterminate period of time.[3] Pursuant to this commitment, J.S.R. has remained in foster homes until the date of his adoption in these proceedings.[4]

In the months immediately following J.S.R.'s birth, appellant sought to place him for adoption, but the Department of Public Welfare, for reasons which are again unclear of record, declined to accept her consent to adoption. She has never executed a Consent to Adoption and in recent years has repeatedly refused such consent.

The court below conducted a two-day hearing on the adoptors' petition for adoption. Numerous witnesses were heard, including a psychiatrist from Children's Hospital who had examined J.S.R. The adoptors were represented by counsel. The court appointed an attorney for appellant, another to represent the interest of J.S.R., and an Assistant Corporation Counsel participated on behalf of the District of Columbia.

The court found that J.S.R. had never known his natural mother; and had experienced personality damage from the several foster home placements which had occurred during his first four years, but that he was beginning to gain confidence in the home of his adoptors. The court found that appellant was a victim of multiple sclerosis who was dependent on others for most of her physical needs.[5]

The trial court, expressing full recognition of the interest of the natural parent and her right to primary consideration, found that consent to his adoption was being "withheld contrary to his best interest." Recognizing that courts are seldom faced with the choice of good and bad, particularly when dealing with children, the trial court characterized its choice as being "the least detrimental alternative."[6] It granted the petition for adoption, thereby terminating the parental relationship between J.S.R. and his natural parents.

I.

[1, 2] To withstand a vagueness challenge, a statute such as here at issue must state its standard with adequate clarity and mark sufficiently distinct boundaries for

2. Appellant's other contentions consist of the asserted ineffectiveness of her court-appointed attorney; the asserted bias of the trial judge; a contention that a finding of "unfitness" of the natural parent is required by our decisions before D.C. Code 1973, § 16-304(e) can be invoked; and that the findings as made are not supported by the evidence. These contentions are likewise without ment.

3. Appellant appeared personally in this proceeding in 1969. She admitted the allegations in the petition. Medical evidence was introduced confirming that she was a paraplegic and unable to care for J.S.R.

4. J.S.R. was placed in the home of the adoptors in December 1971 and has been in their care continually since that time.

5. A portion of the trial court's well-reasoned and thoughtful opinion is appended hereto as Appendix A.

6. *See* J. Goldstein, A. Freud, and A. J. Solnit, Beyond the Best Interest of the Child (1973); and decision of Judge Murphy in his excellent opinion in *In re N. M. S.*, 102 Wash.D.L.Rep. 281 (Jan. 17, 1974), *aff'd*, D.C.App., 347 A.2d 924 (1975).

BEST COPY AVAILABLE

the law to be fairly administered. However, lack of precision is not, in and of itself, offensive to the requirement of due process. *Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957).

The standard "best interest of the child" began to gain prominence in the jurisprudence of this country in the contexts of child-custody cases subsequent to the fountainhead opinion of Judge Brewer in *Chapsky v. Wood*, 26 Kan. 650 (1881). Its first recognition in this jurisdiction appears to have been in *Wells v. Wells*, 11 App.D.C. 392 (1897), and by today it has become well engrained in our decisional law as the test to be applied in child-custody cases, whether between spouses, *Coles v. Coles*, D.C. App., 204 A.2d 330 (1964), or between natural parent and a non-parent, *In re N. M. S.*, D.C.App., 347 A.2d 924 (1975).[7] Likewise, we have applied "the best interest of the child" standard in child neglect cases. *In re Lem*, D.C.Mun.App., 164 A.2d 345 (1960); *In re Lambert*, D.C.Mun.App., 86 A.2d 411 (1952). We have recognized that this standard does not contain precise meaning. As we have pointed out, given the multitude of varied factual situations which must be embraced by such a standard, it must of necessity contain certain imprecision and elasticity. *In re N. M. S., supra; Johnson v. Lloyd*, D.C.App., 211 A.2d 764 (1965); *Coles v. Coles, supra*.

To say that such standard lacks precise meaning is not to say that it is without content and bounds. Such content and bounds have been explicated over the years not only in custody disputes between parents,[8] and between parent and non-parent,[9] but in child neglect cases as well.[10] We think it is plain that the standard "best interest of the child" requires the judge, recognizing human frailty and man's limitations with respect to forecasting the future course of human events, to make an informed and rational judgment, free of bias and favor, as to the least detrimental of the available alternatives. *In re Adoption of Tachick*, 60 Wis.2d 540, 210 N.W.2d 865 (1973). No more precision appears possible.[11] In this context, no more is constitutionally required. *Winter v. Director, Department of Welfare*, 217 Md. 391, 143 A.2d 81 (1958).

II.

[3, 4] Appellant contends that to permit adoption of J.S.R. over her objection without requiring a finding that she is unfit violates constitutional mandates. She contends that since D.C.Code 1973, § 16–304(e) does not contain such a requirement, it denies her due process of laws guaranteed to her by the Fifth Amendment.

The right of a natural parent to raise one's child is a fundamental and essential one which is constitutionally protected. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). However, it is not an absolute one. The state has both the right and the duty to protect minor children through judicial determinations of their interest. *Id.* To this end, the state has a substantial range of authority to protect the welfare of a child, *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), and the state's legitimate interest in the child's welfare may be implemented by separating the child from the parent, *Stanley v. Illinois*.

In *Winter v. Director, Department of Welfare, supra*, the natural father of a minor challenged the constitutional validity of a Maryland statutory framework, nearly identical to our own, which permitted adoption without parental consent if the

7. The adoption of this test in New York was by the opinion of Judge Cardozo in *Finlay v. Finlay*, 240 N.Y. 429, 148 N.E. 624 (1925).

8. *Coles, supra; Boone v. Boone*, 80 U.S.App. D.C. 152, 150 F.2d 153 (1945).

9. *In re N. M. S., supra; Johnson v. Lloyd, supra; Cooley v. Washington*, D.C.Mun.App., 136 A.2d 583 (1957); *Holtsclaw v. Mercer*, 79 U.S.App.D.C. 252, 145 F.2d 388 (1944).

10. *In re Lem, supra; In re Lambert, supra*.

11. See The Uniform Marriage and Divorce Act (U.L.A.) (with amendments approved August 27, 1971) § 402, containing a compilation of factors most commonly relied upon.

court found such consent to be withheld contrary to the best interests of the child. In finding the statute to be constitutionally valid, the Maryland Court of Appeals, recognizing the role of the state as *parens patriae*, stated:

> The validity of legislation permitting an adoption without the parents' consent is based upon the fact that a parent has no inherent right of property in a child, and the right that a parent has to the custody and rearing of his children is not an absolute one, but one that may be forfeited by abandonment, unfitness of the parent, or where some exceptional circumstances render the parents' custody of the child detrimental to the best interests of the child. [*Id.*, 217 Md. at 396, 143 A.2d at 84 (citations omitted).]

We find nothing offensive to constitutional mandates in our statutory standard which focuses on the best interest of the child rather than solely on the status or abilities of the natural parent.

III.

[5, 6] Having concluded that the right of a parent to raise one's child is an essential, but not absolute, one, which can be terminated when the best interest of the child so requires, we turn to appellant's last contention on appeal. She contends the standard of proof used to determine whether parental consent was being withheld contrary to the child's best interest, *i. e.*, that of a "substantial preponderance" of the evidence, is too low to comport with due process of law. The "preponderance" standard is said to be a comparative one requiring the court to merely determine who has the most competent evidence, and consequently, is too insecure a basis for severance of parental ties. Appellant submits that "clear and convincing" is the minimum constitutionally-tolerable standard and urges this court to adopt the higher standard of "beyond a reasonable doubt."

The adoption statute does not, by its terms, set the standard of proof. We note for purposes of comparison that the allegations in a neglect petition need only be established by a "preponderance of the evidence." D.C.Code 1973, § 16–2317(c)(2). Since the consequences of a finding that parental consent to an adoption is being withheld contrary to the best interests of the child are more severe than those of a finding of neglect, we conclude a higher standard of proof is warranted, although not constitutionally required. We, therefore, hold that parental consent must be shown to have been withheld contrary to the child's best interests by "clear and convincing" evidence. This degree of proof is particularly appropriate in cases, such as the instant one, in which "the wisdom of experience has demonstrated the need for greater certainty, as where this high standard is required to sustain claims which have serious social consequences or harsh or far-reaching effects on individuals . . ." 32A C.J.S. *Evidence* § 1023 (1964); *United States v. Bridges*, 133 F.Supp. 638, 641 n. 5 (N.D.Cal.1955).

After a careful review of the record, we are satisfied that the standard enunciated by the trial court, *i. e.*, "substantial preponderance" of the evidence and the one we establish herein, *i. e.*, "clear and convincing" evidence, are substantially identical. Thus, there is no occasion to remand to the trial court for consideration in light of this opinion.

Affirmed.

APPENDIX A

Superior Court of the District of Columbia Family Division

J–0084–69

8501–72–A

In the Matter of J.S.R., Respondent

OPINION AND ORDER

[Portions of Opinion Omitted]

Mounting empirical evidence indicates that a child's wellbeing and growth are enhanced by a stable home setting in which his psychological needs for love, discipline and nurture are consistently provided. Change in his home setting is invariably

BEST COPY AVAILABLE

APPENDIX A—Continued

detrimental in the short run, and, if repeated frequently, results in a sociopathic personality which finds it difficult to trust and relate to others with confidence. (Footnote omitted) Dr. Alan B. Zients, the psychiatrist from Childrens' (sic) Hospital and a forensic psychiatric consultant to the D.C. Department of Human Resources, testified after an examination of the child J.S.R. that J.S.R. has already experienced some personality damage from the several changes which occurred in his first four years, but is beginning to grow in trust and confidence in the nurturing home of the prospective adoptive parents. In the considered opinion of Dr. Zients, "the least detrimental alternative" for J.S.R. would be to be continued and permanently established in the household in which he is now living, the home of the prospective adoptive parents. Another change in setting would undoubtedly set back his growth and hence not be in his best interests.

In this case, through circumstances to some extent beyond the control of [the natural mother] J.S.R. presently knows no other parents than . . . (the adoptors) . . .. They have become his psychological parents. To return him to the custody of his biological mother now because of his blood relationship would be traumatic and would require another major adjustment not deemed to be in the best interests of J.S.R. (footnote omitted).

The physical and psychological needs of J.S.R. are now being met by [the adoptors] Their interaction, companionship and affection for the child is manifest. The letter which the Court received from their adopted son, now a young adult, indicates an additional wholesome tie available to J.S.R. if this petition for adoption is granted. The child is clearly wanted by the prospective adoptive parents.

J.S.R. is also now wanted by his biological mother. But her reasons appear more selfish. Her expressed belief is that a mother has the right to keep her own child. She is a victim of multiple sclerosis with a severely shortened life expectancy. She is dependent upon practical nurses, her other two children and new husband for most of her physical needs. She and her husband and two children now live in a one bedroom apartment. The D.C. Department of Human Resources provides most of the funds for her and her children, supplemented by the meager and sporadic income of her new husband. Although comparison of economic wellbeing is low on the scale of this Court's consideration of what is in "the best interests of the child," there is little doubt that J.S.R. would be materially better provided for by the prospective adoptive parents.

The biological mother has overcome major physical and economic obstacles that made it necessary to declare J.S.R. to be "without adequate parental care" in 1970. Today she and her new husband maintain a viable, if marginal, home for her two older children. If the Court's only choice was between continued foster home placement or returning J.S.R. to his biological mother's home, this Court would, in today's circumstances, definitely set aside the present order of commitment and return him to [appellant's] care and custody.

But today there is a third possibility because of the petition filed by the prospective adoptive parents. Because it seems to this Court to assure the greatest possibilities for maximum continuity of relationships, surroundings and environmental influence, the Court believes that this adoption is in the best interests of J.S.R.

When a judge ascends the bench he is usually given a robe and gavel. A crystal ball is not provided. The law does not afford him the capacity to see into the future. If this Court could lift the curtain of the future and predict the fate which the Almighty intends for [appellant] or [the adoptors], it would be much easier to determine what is in the best interests of J.S.R. Without prescience and with a knowledge of my judicial limitations, but relying upon seventeen years of experience, this Court is convinced by a substantial preponderance of proof in the particular circumstances of this case that the alternative of adoption is the course which is best for J.S.R. Consequently, the Court finds that [appellant's] refusal to consent is contrary to J.S.R.'s best interests and the adoption is granted despite her refusal to agree.

/s/ Orman W. Ketcham
Associate Judge

Date: June 18, 1974